

# Research on the impact of the UK's exit from membership of the EU on law enforcement and judicial cooperation in Scotland

## Supplementary written evidence

### Introduction

On Wednesday 30 April 2025 Gemma Davies, Associate Professor of Criminal Law, Durham University and Helena Farrand Carrapico, Professor of International Relations and European Politics, Northumbria University had an [oral evidence session](#) with the Criminal Justice Committee. This focussed on the research work they had undertaken for the Committee on the criminal justice relationship between Scotland the EU.

During that session, Members requested Supplementary written evidence on a number of issues. This was received by the Criminal Justice Committee on Thursday 15 May 2025 and is attached for information.

Criminal Justice Committee clerks  
May 2025

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### Response

<p>Q1. OR Column 18: Exchange with Liam Kerr MSP around how prison conditions in Scotland are impacting decisions by EU Member State courts on requests from Scotland for the surrender of a suspect wanted in Scotland</p>
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Article 3 of the ECHR prohibits torture, inhuman or degrading treatment or punishment. In the context of extradition cases Article 3 serves as a safeguard against the transfer of individuals where they would face a breach of this right. Article 3 is interpreted broadly and covers situations where individuals are subjected to severe physical or mental suffering, even if this falls short of torture.

Where concerns are raised about prison conditions a state can provide assurances to the requested state that conditions will not breach Article 3. Requests for assurances have significantly risen in recent years. This is true also in relation to UK courts when considering requests from other courts. For example, see *Lord Advocate on behalf of the Government of the United States of America v A (unreported) [2021]* where the Edinburgh court discharged a requested person sought by the United States on grounds related to prison conditions in Texas. In 2022 the Edinburgh Sherrif court also refused a request for extradition from Ireland for the return an Irish citizen wanted on charged relating to intimate partner violence on the basis of prison conditions relating to inadequate toilet facilities. <https://www.irishlegal.com/articles/irish-citizen-wanted-for-charges-against-ex-partner-loses-slopping-out-extradition-appeal-in-scotland>

Whilst cases are wide ranging the primary issues raised in Article 3 cases relating to prison conditions are: overcrowding, inadequate healthcare provision, lack of personal development opportunities and poor living conditions.

UK and EU member states post-Brexit are not bound by the principle of mutual trust as confirmed in the case of *Alchaster Case C-202/24*. This fact has been considered by the Irish courts who have confirmed that there is a change of approach to requests from the UK post Brexit (*Minister for Justice v Dumitri [AKA Cerban] (Approved)* ([2025] IEHC 69)). They must directly evaluate the risk without presuming mutual trust. This necessitates a rigorous and comprehensive evaluation of the specific circumstances surrounding each extradition request.

In the case of *Minister for Justice and Equality v Sharples (Approved)* ([2024] IEHC 282) the Irish court dealt with a request for surrender to Scotland under the TCA for charges of firearm possession and assault. Surrender was denied in June 2023 primarily due to concerns over risks to the requested person's Article 3 rights. The requested person had autism spectrum disorder. Lawyers highlighted that Barlinnie prison was at 132% capacity, the defendant would be confined to a cell for 22 hours a day and held in a cell of less than three square metres of space per prisoner. The European Court of Human Rights has held that personal space of less than three square meters raises a strong presumption of a violation of Article 3.

After discharge of Mr Sharples Scotland issues a second warrant providing enhanced assurances regarded his treatment and care in Scotland. Ultimately the case was appealed to the High Court and surrender was ordered despite arguments from Mr Sharples lawyers that the assurances were unsatisfactory as they were provided by the competent authority and not the Scottish Prison Service.

There have also been examples in England of refusals based on prison conditions. In September 2023 a German court refused to extradite an Albanian national accused of trafficking cocaine and laundering money to England. It was reported that 'extradition is not possible in view of the state of the British prison system. There are no legal remedies against this.' This related to issues of overcrowding, staff shortages and inmate violence. The court sought guarantees from the UK but subsequent queries on which prison the accused would be detained at and under what conditions were unanswered leading to the refusal.

<https://www.lawgazette.co.uk/commentary-and-opinion/a-new-blow-for-our-justice-system/5117009.article>

In most cases where assurances are provided by Scotland and England they are accepted by the requested state. COPFS may be able to provide more detail of cases where assurances have been requested and the nature of these assurances, if needed. Such cases would not necessarily be in the public

domain or reported in English. As set out in the report during interviews we were told by COPFS that there had been three recent examples of assurances being requested by courts surrounding prison conditions in Scotland.

As extradition cases in Ireland are written in English, made public and searchable I can provide the following recent examples of arguments made in relation to UK prison conditions.

In the case of *Minister for Justice v Dumitri [AKA Cerban] (Approved)* [2025] IEHC 69 the court considered the potential for violence in the UK prisons and poor standards in HMP Pentonville and HMP Wandsworth.

In the case of *Minister for Justice v Keating* [2024] IEHC 515 the court heard arguments relating to overcrowding in UK prisons.

On 12 February 2025 the Times Home Affairs Editor reported that a report compiled by the Prison Officers Association highlighted that ‘prison conditions in the UK are so poor that other countries are refusing to extradite criminals to Britain’.

<https://www.thetimes.com/uk/law/article/foreign-courts-refuse-extradition-to-inhumane-british-prisons-8zv692j7?msocid=19f51f62f8de6fcf34930b54f93e6ead>

Q2. OR Column 23: Exchange with Ben Macpherson MSP on UK’s loss of access to EU agreements with third countries to address issues like organised crime etc. Follow up details of such examples sought.

The European Union cooperates with third countries on combatting organised crime through a number of paths. The first one corresponds to agreements between EU agencies and third countries: these include operational agreements, strategic agreements, and working arrangements between Europol and third countries (such as the United States and China), as well as cooperation agreements between Eurojust and third countries (such as Albania and Georgia), and partnerships between the European Union Drugs Agency and third parties (such as Colombia and Ecuador).

The second path is composed of regional cooperation agreements and programmes, which are focused on illegal products’ supply routes. This cooperation prioritises a number of regions, namely, Latin America and the Caribbean (technical assistance programmes and boosting national and regional capabilities to fight organised crime), West Africa (building up state institutions and regional organisations focusing on illicit trafficking, cybercrime, money laundering and the financing of terrorism), North Africa and the Middle East (surveillance of drug markets), Central Asia (reduction of drug use, supporting Central Asian Governments’ drug policies and improved access to quality drug demand reduction programmes, in addition to fostering sustainable economic development through integrated border management), Western Balkans (police cooperation, support for the creation of early warning systems and national drugs observatories to exchange data with the EU).

Post-Brexit, the UK still benefits from indirect, piecemeal access to the data provided by third countries to Europol and to Eurojust (on the basis of requests for information contained in the Europol Information System, for example), but no longer benefits from the regional cooperation agreements and programmes led by the EU to combat organised crime. As an alternative, the UK has chosen to strengthen cooperation bilaterally with those regions/ countries it has identified as being at the origin, or serving as transit point, for organised criminals. It is the case, for example of the UK's efforts to tackle Western Balkan migrant and organised crime transit route, which was highlighted by the UK Government earlier this month (please see <https://www.gov.uk/government/news/uk-to-tackle-western-balkan-migrant-transit-routes-and-serious-organised-crime-with-closer-ties-in-the-region#:~:text=UK%20to%20tackle%20Western%20Balkan%20migrant%20transit,mission%20at%20a%20time%20of%20increased%20volatility>).

The UK has also spearheaded multilateral fora aimed at bringing countries together and discussing how best to address illegal migration (please see the Organised Immigration Crime Summit, which took place on the 31<sup>st</sup> of March 2025).

Q3. OR Columns 25-26: Exchange with Liam Kerr MSP on issues around the UK developing the necessary technical capabilities to share data like vehicle registrations with the EU etc.

On the 7<sup>th</sup> of May 2025, the Specialised Committee on Law Enforcement and Judicial Cooperation confirmed that the UK has now notified the EU of its readiness to operate the Vehicle Registration Data (VRD) capability. No technical issues remaining, the UK is now awaiting an evaluation visit from the EU, which will take place this year. For the Specialised Committee communication, please see:

<https://www.gov.uk/government/publications/specialised-committee-on-law-enforcement-and-criminal-justice-minutes/fourth-meeting-minutes-specialised-committee-on-law-enforcement-and-judicial-cooperation-13-december-2024#:~:text=The%20UK%20confirmed%20that%20it%20had%20notified,in%20line%20with%20the%20procedure%20under%20Art.>

As a result, the section referring to vehicle registration data in the report submitted last year to the Scottish Parliament is no longer up to date.